



{In Archive} Fw: Draft Nitrate Strategy Evaluation

Chris Dudding to: Scott Marquess, Neftali Hernandez-Santiago
Sent by: **Chris Dudding**

10/06/2009 12:11 PM

From: Chris Dudding/CNSL/R7/USEPA/US
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From before my time in SDWA -- draft nitrate strategy evaluation -- I do not know whether it was ever finalized. Neftali?

here's a snippet from the attached document:

IMPLEMENTATION

According to the Strategy, all agreements were to be implemented with an administrative consent order or administrative order. All systems under the Nitrate Strategy received orders, which clearly laid out the terms of the Strategy. The Strategy states that "Appropriate time frames for completion of the activities will be negotiated with the public water system." Documentation to support negotiation of time frames does not exist in the files. The Strategy also provides a provision to terminate the order for systems that meet the MCL for nitrate for four consecutive quarters. None of the systems under the Strategy have met these criteria. The Strategy further states that after seven years, KDHE and EPA will reevaluate the application of the Strategy among systems that have not returned to compliance. Criteria used for reevaluation include: whether the trend of nitrates is increasing or decreasing, amount of usage from points of entry, extent of participation in the wellhead protection program and availability of funding. In general, nitrate levels have increased or fluctuated. A steady decline of nitrates was not exhibited by any of the systems. Participation in a wellhead protection program was mentioned in two files: Jewell Co RWD and Pretty Prairie. There is not sufficient information in the files documenting involvement in wellhead protection, amount of usage in comparison to nitrate concentrations and funding. More specific evaluation of these criteria is included in Appendix B.

III. CONCLUSION

The Nitrate Strategy was originally intended to guide systems into compliance by encouraging the system to evaluate all options and determine the most effective means to reach compliance. System were allowed considerable time to attempt wellhead protection and secure funding. While several systems, such as City of Plains, City of Gaylord, City of Long Island and City of Green have reached compliance while under the Strategy, many systems, including City of Conway Springs, City of Norwich, City of Pretty Prairie, and Jewell County RWD #1 remain out of compliance after seven years. In instances where compliance has been achieved, more detailed documentation is necessary to support the time necessary to reach compliance.

Under 40 CFR 141.62, nitrate is permitted in systems at or below a level of 10 mg/L. EPA has taken the position that levels above 10 mg/L are considered a significant health risk. Section 2.2.3 of EPA's "Variance Technologies Findings for Contaminants Regulated Before 1996" document (EPA 815-R-98-003) dated September 1998, describes a statutory screen

(Section 1412(b)(15)(B) of the SDWA) associated with adequate levels protective of public health, and the derivation of URTH values for regulated contaminants that passed the first two screens (Sections 1415(e)(6)(A) and (B)). Based on this screening, several contaminants, including nitrite and nitrate plus nitrite were removed from consideration for a variance technology since the derived URTH values were equal to or very close to the MCL. Both nitrite and nitrate plus nitrite have an MCLG based on acute toxicity. Thus any exceedance of the MCL may be considered a significant health risk. According to the Strategy, corrective action is not required until nitrate levels reach 20 mg/L.

IV. RECOMMENDATIONS

The purpose of the Nitrate Strategy was to provide the system time to come into compliance. The results of the Nitrate Strategy evaluation indicate that Strategy has not been effective in returning systems to compliance. The Strategy is inconsistent with federal regulations, and therefore, may compromise the intent of the regulations to achieve compliance. Most PWS did not meet the terms of the initial Strategy and long-standing nitrate levels have continued. EPA would like to ensure that these PWS return to compliance in a timely manner.

Systems currently under the Nitrate Strategy should be addressed using conventional enforcement methods. KDHE should continue to pursue enforcement against systems which continually detect nitrate at levels that exceed the MCL. Sending administrative compliance orders or consent decrees with compliance schedules guides systems into compliance while advocating timeliness to address the issue. EPA recommends improving communication regarding the seriousness of nitrate violations by correcting deficiencies in the public notice and Consumer Confidence Report.

Recognizing that voiding the Nitrate Strategy may pose a significant workload burden on the state, EPA would like to provide KDHE with the opportunity to create a plan and schedule describing how KDHE will address the systems currently under the Nitrate Strategy, to be submitted per EPA review and approval.

----- Forwarded by Chris Dudding/R7/USEPA/US on 10/06/2009 12:10 PM -----

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Date: 05/24/2005 03:52 PM
Subject: Draft Nitrate Strategy Evaluation

Dave, Darrel and Kelly,

Attached is the draft Nitrate Strategy Evaluation for discussion at our meeting tomorrow. I recognize that you are receiving this with short notice. If you like, we can go through the findings in greater detail at the meeting before specific details are discussed. We look forward to meeting with you.



Findings of Evaluation2.doc

Thanks,
Kim

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